

# Exhibit 1

Approved, SCAO

Original - Court  
1st copy - Defendant2nd copy - Plaintiff  
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2017-160028 CD
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Court address  
Courthouse Tower 1200 N. Telegraph Road Pontiac, Michigan

248-858-1000

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).

Jerry Reynolds  
29764 Mark Avenue  
Madison Heights, MI 48071  
248-506-7528

v

Defendant's name(s), address(es), and telephone no(s).

Hungry Howie's Distributing, Inc.  
30300 Stephenson Highway  
Madison Heights, MI 48071

Plaintiff's attorney, bar no., address, and telephone no.

Matthew Broderick P47403  
30701 Barrington Suite 100  
Madison Heights, MI 48071  
248-588-1882

This case has been designated as an eFiling case. To review a copy of the  
Notice of Mandatory eFiling visit [www.dakgov.com/clerkrod/Pages/efiling](http://www.dakgov.com/clerkrod/Pages/efiling).

**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 10/24/2017	This summons expires OCT 27 2017	Court clerk Lisa Brown
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Family Division Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

- ☐ This case involves a minor who is under the continuing jurisdiction of another Michigan court. The name of the court, file number, and details are on page \_\_\_\_ of the attached complaint.
- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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Civil Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence \_\_\_\_ in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Madison Heights, Oakland, Michigan	Defendant(s) residence (include city, township, or village) Madison Heights, Oakland, Michigan
Place where action arose or business conducted Madison Heights, Oakland County, Michigan	

Date 10/24/2017

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Note to Plaintiff: The summons is invalid unless served on or before its expiration date.

**PROOF OF SERVICE**

**SUMMONS AND COMPLAINT**

Case No. 2017-1600280

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

☐ OFFICER CERTIFICATE

OR

☐ AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint.

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee
\$		\$
Incorrect address fee	Miles traveled	Fee
\$		\$
		TOTAL FEE
		\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_ Date \_\_\_\_\_ County, Michigan.

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Signature: \_\_\_\_\_ Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments

\_\_\_\_\_ on \_\_\_\_\_ Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_ Signature

received for Filing Oakland County Clerk 10/24/2017 2:16 PM

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit [www.oakgov.com/clerkrod/Pages/efiling](http://www.oakgov.com/clerkrod/Pages/efiling).

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
CIVIL DIVISION

Jerry Reynolds,

Plaintiff,

-vs-

Hungry Howies Distributing, Inc.

Defendants.

CD  
2017-160028-CD

JUDGE BOWMAN

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Matthew Broderick P47403  
Attorney for Plaintiff  
30685 Barrington Suite 130  
Madison Heights, MI 48071  
248-588-1882

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT

Plaintiff states the following:

Jurisdiction and Parties

1. This is an action to enforce civil and common-law rights arising out of Plaintiff's employment relationship with Defendant corporation.
2. Plaintiff resides in Oakland County, Michigan.
3. Defendant is a Michigan corporation doing business in Oakland County, Michigan.
4. The events giving rise to this cause of action occurred in Oakland County, Michigan.

5. The amount in controversy exceeds \$25,000, exclusive of interest, costs, and attorney fees.

#### Background Facts

6. Plaintiff began his employment with Defendant on September 17, 2008 as a truck driver and warehouseman.

7. At all material times, Plaintiff performed his job duties in a manner that was satisfactory or better.

8. Plaintiff has a history of cancer of the thymus, myasthenia gravis and a work related back injury.

9. Defendant was well aware of these conditions.

10. On or around April 30, 2014, Plaintiff suffered a disabling back injury while in the course of his employment with Defendant; he subsequently underwent a back surgery.

11. Plaintiff participated in a lumbar back injury rehabilitation program shortly after his surgery.

12. Plaintiff's physician authorized him to return to work on a full-time basis, with restrictions of no heavy lifting in July 2014.

13. Plaintiff was eager to return to work and requested a return-to-work date in accommodated work.

14. Plaintiff's supervisor refused to return Plaintiff's calls and therefore, Plaintiff was deprived of the opportunity to return to work.

15. Defendant failed to assist Plaintiff to a return to work despite Plaintiff being ready, willing and able to return to work even with his back injury and other conditions.

16. On July 31, 2014, Defendant terminated Plaintiff's employment.

17. Defendant has routinely offered employees accommodated work in the course of its business.

18. Plaintiff's physician has confirmed that Plaintiff was able to return to work full-time and with restrictions and with accommodations since the date of Plaintiff's termination from employment and Plaintiff has remained able to perform such work.

19. Defendant terminated Plaintiff's employment due to his failure to work after expiration of his leave entitlement.

#### COUNT I

20. Plaintiff incorporates by reference paragraphs 1 through 19.

21. At all material times, Plaintiff was an employee, and Defendant Corporation was his employer, covered by and within the meaning of the Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1201 et seq.

22. Plaintiff's cancer of the thymus in remission and back condition constitute a *disability*, as that term is defined by and within the meaning of the PDCRA, MCL 37.1103(e).

23. At the time of his termination, Plaintiff's health conditions were unrelated to his ability to perform the duties of a no touch freight driver on the cheese route with Defendant Corporation and is unrelated to his qualifications for employment as a truck driver with accommodations.

24. Plaintiff was discriminated against, within the meaning of the PDCRA, when Defendant terminated him because of his health conditions.

25. Plaintiff's health conditions were a determining factor in Defendant's decision to terminate Plaintiff and preclude him from returning to work.

26. The actions of Defendant and its agents, representatives, and employees were intentional in disregard for the rights and sensibilities of Plaintiff.

27. As a direct and proximate result of Defendant's unlawful discrimination, Plaintiff has sustained injuries and damages, including the loss of earnings and earning capacity; loss of fringe and pension benefits; mental and emotional distress; humiliation and embarrassment; loss of career opportunities; and loss of the ordinary pleasures of everyday life, including the right to seek and pursue a gainful occupation of choice.

#### COUNT II

Action Under ERISA §502(a)(1)(B), 29 USC 1132(a)(1)(B), to Recover Full Benefits  
And  
Action Under ERISA §502(a)(3), 29 USC 1132(a)(3),  
to Remedy Breach of Fiduciary Duty

28. Plaintiff is a participant, within the meaning of ERISA §3(7), 29 USC 1002(7), in a welfare benefit plan called "Group Long Term Disability Insurance Policy" ("Plan") by virtue of his former employment with Defendant.



29. Defendant is the administrator of a welfare benefit plan within the meaning of ERISA §3(1), 29 USC 1002(1). The Plan was issued by an insurance carrier to defendant, as policyholder. A copy of the Plan is attached as Exhibit A.

28. Defendant is a domestic corporation that is and was at all material times doing business in this district. Company is a fiduciary and administrator, within the meaning of ERISA §§3(16), 402(a)(2), 29 USC 1002(16), 1102(a)(2), with respect to the Plan.

30. On or about April 30, 2014, Plaintiff became entitled to payment of partial disability monthly benefits under the Plan.

31. Plaintiff was notified that his monthly disability policy had been terminated and that he had no entitlement to disability benefit payments.

32. The discontinuation of Plaintiff's disability benefit policy is a direct violation of ERISA.

33. Pursuant to ERISA §404(a), 29 USC 1104(a), as fiduciary with respect to the Plan, Company has and had a duty to discharge its duties with respect to the Plan solely in the interest of the Plan participants and their beneficiaries, and

- a. for the exclusive purpose of providing benefits to Plan participants and their beneficiaries and defraying reasonable expenses of administering the Plan; and
- b. with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and



c. in accordance with the Plan documents and instruments insofar as such documents and instruments are consistent with the provisions of Titles I and IV of ERISA.

34. Defendant's actions in discontinuing Plaintiff's benefits and in refusing to reinstate Plaintiff's policy and the benefits thereunder were in violation of each and every one of its fiduciary duties as set forth above.

PLAINTIFF REQUESTS that this court enter judgment against Defendant as follows:

1. Legal relief

- a. compensatory damages in whatever amount over \$25,000 Plaintiff is found to be entitled
- b. an award of back pay and the value of lost fringe benefits and pension benefits, past and future
- c. exemplary damages in whatever amount over \$25,000 Plaintiff is found to be entitled
- d. an award of interest, costs, and reasonable attorney fees

2. Equitable relief

- a. an order placing Plaintiff in the position he would have held had there been no violation of his rights
- b. an award of interest, costs, and reasonable attorney fees
- c. an order enjoining Defendant from further acts of discrimination or retaliation
- d. whatever other relief appears appropriate at the time of final judgment
- e. whatever other relief may appear appropriate when this court's final order is entered

Respectfully Submitted,



Matthew Broderick P47403  
Attorney for Plaintiff

Dated: July 19, 2017

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**SUMMONS AND COMPLAINT**  
Case No. 2017-1600280

**PROOF OF SERVICE**

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**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

<input checked="" type="checkbox"/> <b>OFFICER CERTIFICATE</b>	OR	<input type="checkbox"/> <b>AFFIDAVIT OF PROCESS SERVER</b>
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104(A)(2)), and that: (notarization not required)		Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☒ I served personally a copy of the summons and complaint.  
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List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time
<u>Huskey Howles</u> <u>DISTRIBUTION</u> <u>SPRING TOWN</u> <u>RESIDENT AGENTS</u>	<u>3030 S. HAWKINS AVE</u> <u>MADISON HEIGHTS, MI 48064</u>	<u>FEBRUARY</u> <u>OCT. 27, 2017</u> <u>3:00 PM</u>

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

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I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	TOTAL FEE
\$		\$	
Incorrect address fee	Miles traveled	Fee	
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on \_\_\_\_\_ Date \_\_\_\_\_ County, Michigan.

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Signature: \_\_\_\_\_ Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_ Day, date, time

Signature

\_\_\_\_\_ on behalf of \_\_\_\_\_

Received for Filing Oakland County Clerk 11/2/2017 11:43 AM

Approved, SCAO

Original - Court  
1st copy - Defendant2nd copy - Plaintiff  
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2017-160028 CD
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Madison Heights, MI 48071  
248-506-7528

Defendant's name(s), address(es), and telephone no(s).

Hungry Howie's Distributing, Inc.  
30300 Stephenson Highway  
Madison Heights, MI 48071

v

Plaintiff's attorney, bar no., address, and telephone no.

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Docket no.	Judge	Bar no.
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Madison Heights, Oakland, Michigan	Defendant(s) residence (include city, township, or village) Madison Heights, Oakland, Michigan
Place where action arose or business conducted Madison Heights, Oakland County, Michigan	

Date 10/24/2017

Signature of attorney/plaintiff

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